

AMENDED IN SENATE SEPTEMBER 10, 2009

AMENDED IN SENATE SEPTEMBER 2, 2009

AMENDED IN ASSEMBLY MAY 5, 2009

AMENDED IN ASSEMBLY APRIL 20, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 813

Introduced by Assembly Member John A. Perez

(Principal coauthor: Assembly Member Hall)

(Principal coauthor: Senator Cedillo)

(Coauthor: Assembly Member Audra Strickland)

(Coauthors: Senators Calderon, Florez, Oropeza, Padilla, Strickland,
and Wright)

February 26, 2009

An act to add Section 25503.42 to the Business and Professions Code, relating to alcoholic beverages, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 813, as amended, John A. Perez. Alcoholic beverages: advertising.

Existing law generally restricts certain alcoholic beverage licensees, including manufacturers and winegrowers, from paying, crediting, or compensating a retailer for advertising in connection with the advertising and sale of alcoholic beverages.

This bill would expressly authorize a beer manufacturer, holder of a winegrower's license, California winegrower's agent, distilled spirits manufacturer, holder of a distilled spirits rectifiers general license, or a distilled spirits manufacturer's agent to purchase advertising space or

time from specified fully enclosed venues located in Los Angeles County, as described, under specified conditions. This bill would require a venue owner ~~who~~ *that* enters into a written agreement pursuant to this authorization to obtain an annual certificate from the Department of Alcoholic Beverage Control ~~and to pay an initial and annual certification fee of \$750.~~ This bill would additionally require the department to, in its annual report to the Legislature, include specified information ~~and recommendations to the Legislature~~ with regard to this authorization. This bill would also make a beer manufacturer, holder of a winegrower's license, winegrower's agent, distilled spirits manufacturer, holder of a distilled spirits rectifiers general license, or a distilled spirits manufacturer's agent who, through coercion or other means, induces the holder of a wholesaler's license to fulfill those contractual obligations guilty of a misdemeanor. This bill would additionally make an on-sale retail licensee, as described, who solicits or coerces a holder of a wholesaler's license to solicit a beer manufacturer, holder of a winegrower's license, winegrower's agent, distilled spirits manufacturer, holder of a distilled spirits rectifiers general license, or a distilled spirits manufacturer's agent to purchase advertising time or space guilty of a misdemeanor. The bill thus imposes a state-mandated local program by creating new crimes.

This bill would make findings regarding the need for special legislation.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 25503.42 is added to the Business and
- 2 Professions Code, to read:
- 3 25503.42. (a) Notwithstanding any other provision of this
- 4 chapter, a beer manufacturer, the holder of a winegrower's license,
- 5 a California winegrower's agent, a holder of a distilled spirits

1 rectifiers general license, a distilled spirits manufacturer, or a
2 distilled spirits manufacturer's agent may purchase indoor
3 advertising space or time at a fully enclosed venue with box office
4 sales and attendance by the public on a ticketed basis only, with
5 a patronage capacity in excess of 2,000, located in Los Angeles
6 County within the area subject to the Los Angeles Sports and
7 Entertainment District Specific Plan adopted by the City of Los
8 Angeles pursuant to ordinance number 174225, as approved on
9 September 6, 2001, where the owner of the venue is not the on-sale
10 retail licensee. The purchase of the indoor advertising space or
11 time shall be subject to all of the following conditions:

12 (1) The indoor advertising space or time is purchased only at
13 the venue specified in this subdivision.

14 (2) The purchase of indoor advertising space or time shall be
15 conducted pursuant to a written agreement entered into by the beer
16 manufacturer, holder of a winegrower's license, California
17 winegrower's agent, holder of a distilled spirits rectifiers general
18 license, distilled spirits manufacturer, or a distilled spirits
19 manufacturer's agent and the owner of the venue described in this
20 subdivision. A holder of a wholesale license shall not be a party
21 to the written agreement or otherwise ~~be a beneficiary or obligor~~
22 ~~under the written agreement~~ *have any direct or indirect obligations*
23 *under the agreement, including an obligation to share in the costs*
24 *or contribute to the costs of the indoor advertising space or time*
25 *purchased pursuant to this section.*

26 (3) An agreement for the purchase of indoor advertising space
27 or time pursuant to this section shall not be conditioned directly
28 or indirectly, in any way, on the purchase, sale, or distribution of
29 any alcoholic beverage manufactured or distributed by the
30 advertising beer manufacturer, holder of a winegrower's license,
31 California winegrower's agent, holder of a distilled spirits rectifiers
32 general license, distilled spirits manufacturer, or a distilled spirits
33 manufacturer's agent by any on-sale retail licensee.

34 (4) An on-sale licensee operating at a venue described in this
35 subdivision where indoor advertising space or time is purchased
36 shall serve other brands of beer distributed by a competing beer
37 wholesaler in addition to the ~~brand~~ *brands* manufactured or
38 marketed by the advertising beer manufacturer, other brands of
39 wine distributed by a competing wine wholesaler in addition to
40 the ~~brand~~ *brands* produced or marketed by the advertising

1 winegrower or California winegrower's agent, and other brands
2 of distilled spirits distributed by a competing distilled spirits
3 wholesaler in addition to the ~~brand~~ *brands* manufactured or
4 marketed by the advertising distilled spirits manufacturer ~~or, the~~
5 distilled spirits manufacturer's agent, *or a holder of a distilled*
6 *spirits rectifiers general license.*

7 ~~(5) The total gross sales by the on-sale licensee of wine and~~
8 ~~distilled spirits brands owned or distributed by the holder of a~~
9 ~~winegrower's license, California winegrower's agent, distilled~~
10 ~~spirits manufacturer, holder of a distilled spirits rectifiers general~~
11 ~~license, or a distilled spirits manufacturer's agent that has~~
12 ~~purchased indoor advertising space or time shall not exceed 15~~
13 ~~percent of the on-sale licensee's gross sales of all alcoholic~~
14 ~~beverages during the period within which the licensee has~~
15 ~~purchased indoor advertising time or space. The on-sale licensee~~
16 ~~shall at all times maintain records that reflect separately the gross~~
17 ~~sales of brands owned or distributed by the holder of a~~
18 ~~winegrower's license, California winegrower's agent, distilled~~
19 ~~spirits manufacturer, holder of a distilled spirits rectifiers general~~
20 ~~license, or a distilled spirits manufacturer's agent that has~~
21 ~~purchased indoor advertising time or space and the on-sale~~
22 ~~licensee's gross sales of all alcoholic beverages during the period~~
23 ~~within which the on-sale licensee has purchased indoor advertising~~
24 ~~time or space. The on-sale licensee shall maintain these records~~
25 ~~no less frequently than on a quarterly basis and shall make these~~
26 ~~records available to the department on demand.~~

27 *(5) No more than 15 percent of the retail licensee's purchases*
28 *of distilled spirits and wine for sale on its licensed premises shall*
29 *be manufactured, produced, or distributed by the holder of a*
30 *winegrower's license, California winegrower's agent, distilled*
31 *spirits manufacturer, holder of a distilled spirits rectifiers general*
32 *license, or a distilled spirits manufacturer's agent that has*
33 *purchased indoor advertising space.*

34 (b) A beer manufacturer, holder of a winegrower's license,
35 California winegrower's agent, holder of a distilled spirits rectifiers
36 general license, distilled spirits manufacturer, or a distilled spirits
37 manufacturer's agent who, through coercion or other illegal means,
38 induces, directly or indirectly, a holder of a wholesaler's license
39 to fulfill those contractual obligations entered into pursuant to
40 subdivision (a) shall be guilty of a misdemeanor and shall be

1 punished by imprisonment in the county jail not exceeding six
2 months, or by a fine equal to the greater of an amount equal to the
3 entire value of the advertising space or time involved in the contract
4 or ten thousand dollars (\$10,000), or by both imprisonment and
5 fine. The person shall also be subject to license revocation pursuant
6 to Section 24200.

7 (c) An on-sale retail licensee who, directly or indirectly, solicits
8 or coerces a holder of a wholesaler's license to solicit a beer
9 manufacturer, holder of a winegrower's license, California
10 winegrower's agent, holder of a distilled spirits rectifiers general
11 license, distilled spirits manufacturer, or a distilled spirits
12 manufacturer's agent to purchase indoor advertising time or space
13 pursuant to subdivision (a) shall be guilty of a misdemeanor and
14 shall be punished by imprisonment in the county jail not exceeding
15 six months, or by a fine equal to the greater of an amount equal to
16 the entire value of the advertising space or time involved in the
17 contract or ten thousand dollars (\$10,000), or by both imprisonment
18 and fine. The person shall also be subject to license revocation
19 pursuant to Section 24200.

20 (d) For purposes of this section, "beer manufacturer" includes
21 a holder of a beer manufacturer's license, a holder of an out-of-state
22 beer manufacturer's certificate, or a holder of a beer and wine
23 importer's general license.

24 (e) Nothing in this section shall authorize the purchasing of
25 indoor advertising space or time pursuant to subdivision (a) by
26 any beer manufacturer, holder of a winegrower's license, a
27 California winegrower's agent, a distilled spirits manufacturer,
28 holder of a distilled spirits rectifiers general license, or a distilled
29 spirits manufacturer's agent directly or indirectly from any on-sale
30 licensee.

31 (f) A venue owner that meets the description provided in
32 subdivision (a) and that enters into a written agreement pursuant
33 to this section shall obtain an annual certificate from the department
34 ~~and pay an initial certification fee of seven hundred fifty dollars~~
35 ~~(\$750) and thereafter pay an annual certification renewal fee of~~
36 ~~seven hundred fifty dollars (\$750).~~ The director shall prepare, as
37 part of the annual report required by Section 23055 for submission
38 to the Legislature, a listing of the number of certifications ~~and~~
39 ~~payments~~ made pursuant to this section or the absence of any
40 certifications ~~and~~ payments. Where there have been no

1 certifications and payments made pursuant to this section for two
2 consecutive years, a recommendation of repeal of this section *this*
3 *information* shall be included in the report's recommendations for
4 legislation to improve the ability of the department to expeditiously
5 and effectively administer this division. *report*.

6 (g) The Legislature finds that it is necessary and proper to
7 require a separation ~~between~~ *among* manufacturing interests,
8 wholesale interests, and retail interests in the production and
9 distribution of alcoholic beverages in order to prevent suppliers
10 from dominating local markets through vertical integration and to
11 prevent excessive sales of alcoholic beverages produced by overly
12 aggressive marketing techniques. The Legislature further finds
13 that the ~~exceptions~~ *exception* established by this section to the
14 general prohibition against tied interests ~~must~~ *shall* be limited to
15 ~~their~~ *its* express terms so as not to undermine the general
16 prohibition, and intends that this section be construed accordingly.

17 SEC. 2. The Legislature hereby finds and declares, with respect
18 to Section 1 of this act, that a special statute is necessary and that
19 a statute of general applicability cannot be enacted within the
20 meaning of Section 16 of Article IV of the California Constitution,
21 because of unique circumstances and concerns applicable to certain
22 facilities in Los Angeles County.

23 SEC. 3. No reimbursement is required by this act pursuant to
24 Section 6 of Article XIII B of the California Constitution because
25 the only costs that may be incurred by a local agency or school
26 district will be incurred because this act creates a new crime or
27 infraction, eliminates a crime or infraction, or changes the penalty
28 for a crime or infraction, within the meaning of Section 17556 of
29 the Government Code, or changes the definition of a crime within
30 the meaning of Section 6 of Article XIII B of the California
31 Constitution.

32 SEC. 4. This act is an urgency statute necessary for the
33 immediate preservation of the public peace, health, or safety within
34 the meaning of Article IV of the Constitution and shall go into
35 immediate effect. The facts constituting the necessity are:

36 In order to continue to aid in the economic recovery and
37 stimulation of the County of Los Angeles, and maintain the
38 economic viability of the arenas and venues that are a vital

- 1 component of the revitalization of the downtown Los Angeles
- 2 area, it is necessary that this act take immediate effect.

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